

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

DIMETRIOUS WOODS,

Appellant,

v.

MISSOURI BOARD OF PROBATION AND PAROLE,

Respondent.

DOCKET NUMBER WD77882

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: November 24, 2015

APPEAL FROM

The Circuit Court of Cole County, Missouri
The Honorable Daniel R. Green, Judge

JUDGES

Division Three: Ellis, P.J., and Mitchell and Witt, JJ.

CONCURRING.

ATTORNEYS

Dimetrious Woods
Jefferson City, MO

Appellant, *pro se*,

Chris Koster, Attorney General
Caroline M. Coulter, Assistant Attorney General
Jefferson City, MO

Attorneys for Respondent.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

DIMETRIOUS WOODS,

Appellant,

v.

**MISSOURI BOARD OF PROBATION
AND PAROLE,**

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**OPINION FILED:
November 24, 2015**

WD77882

Cole County

Before Division Three Judges: Joseph M. Ellis, Presiding Judge, and Karen King Mitchell and Gary D. Witt, Judges

Dimetrious Woods appeals the grant of summary judgment by the Circuit Court of Cole County in favor of the Missouri Board of Probation and Parole on Woods's petition for declaratory judgment. Woods sought declarations concerning his conditional release date and parole eligibility on sentences arising from multiple convictions. Because the trial court incorrectly calculated the date on which Woods becomes eligible for parole, although not in the manner that Woods argues, we reverse the trial court and enter the judgment the trial court should have entered.

**REVERSED; JUDGMENT ENTERED AS SHOULD HAVE BEEN ENTERED BY
THE TRIAL COURT.**

Division Three holds:

1. While conditional release is akin to parole, the two are not identical or interchangeable terms. The operation of conditional release is specifically dictated by statute, which specifies the time tables under which an offender is entitled to be conditionally released. Parole, on the other hand is almost entirely left to the discretion of the Board once the offender has served the mandatory minimum term for his sentence.

2. Section 558.011 provides that a sentence of imprisonment consists of a prison term and a conditional release term. During the conditional release term, which is the last few months or years of a sentence, the offender is discharged, subject to the Board's conditions and supervision. The portion of the sentence before the conditional release term is the prison term. Section 558.011.4(1) specifies the conditional release terms for all lengths of sentences.
3. Woods received two sentences that run consecutively to each other. In this circumstance, the offender is to serve all of his prison terms consecutively, followed by the consecutive running of the conditional release terms.
4. Woods was sentenced to four years on a conviction for unlawful use of a weapon, and twenty-five years for second-degree drug trafficking. The conditional release portion of a four-year term is one-third of the term, meaning that Woods must serve two years and eight months of his first sentence. At that point, the calculation of the conditional release date on the twenty-five-year sentence began, of which twenty years is the prison term, and five years is the conditional release term. Accordingly, Woods's prison term expires, and his conditional release begins, twenty-two years and eight months after the start of his incarceration.
5. The parole eligibility date is arrived at by adding together the minimum parole eligibility terms for each sentence. Woods has a prior commitment with the Department of Corrections, which means that he must serve at least forty percent of his four-year sentence, or roughly nineteen months. As a prior drug offender, Woods is ineligible for parole on the twenty-five-year term. When this is the case, the full length of the sentence, to which parole does not apply, becomes the minimum term for parole eligibility, for purposes of adding the minimum terms together. Woods is therefore eligible to be considered for parole after serving twenty-six years and seven months.
6. In arguing that he should be eligible for parole earlier than his conditional release date, Woods proposes adding the minimum parole eligibility term for his four-year sentence (nineteen months) to the minimum prison term (conditional release eligibility) of the twenty-five-year sentence (twenty years). This argument is based upon confusion between conditional release and parole, which are distinct. Parole eligibility and conditional release dates may not be "mixed and matched." Rather, the parole eligibility date is reached by adding up the minimum eligibility terms for each sentence, and the conditional release date is determined by adding together the prison terms.
7. The trial court also incorrectly determined that Woods is ineligible for parole at any point. Statutory prohibitions on parole apply only to the sentence for which parole is prohibited, and do not institute a lifetime ban on parole, regardless of whether any other crime committed by the offender allows for parole. Woods will be eligible for parole once he has served forty percent of his four-year sentence, and the full period of the twenty-five-year term.

8. When a trial court issues a judgment that is incorrect, a reviewing court may, in its discretion, enter the judgment that should have been entered. Here, there is no dispute about the material facts, only the application of the law to those facts. The court exercises its discretion to enter the judgment that should have been entered by the trial court: the Board did not err in setting Woods's early release date on October 11, 2029; Woods is eligible for parole for the sentences he is currently serving on September 17, 2033.

Opinion by: Karen King Mitchell, Judge

November 24, 2015

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THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.